

DRAFT:PLC:me (26 Feb 74)

Honorable Sam J. Ervin, Jr., Chairman
Senate Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Chairman Ervin:

This is in reply to your letter dated 11 May 1973, requesting our views concerning S. 1726, which establishes guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

S. 1726 establishes a statutory program for the classification, declassification, and protection of Government information by amending the Freedom of Information Act. Except for Restricted Data, all classified information, including intelligence sources and methods, would be affected.

that
The Central Intelligence Agency clearly recognizes/appropriate elements of our Government must be adequately informed on matters of national importance. However, there are certain considerations that must be borne in mind. The role of CIA is to support the President and the National Security Council by assuring a coordinated effective foreign intelligence collection and analysis program. The success

of the program is dependent upon productive sources and effective methods of collection and analysis which meet national requirements. If security is not properly regarded and sources and methods are revealed, the foreign intelligence collection effort would be critically affected. This was recognized by the Congress in the National Security Act of 1947, as amended, (50 U.S.C.A. 403), Section 102(d)(3), which provides as follows:

"...and provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Agency, under the present Freedom of Information Act and Executive Order 11652, "Classification and Declassification of National Security Information and Material," has established a program to handle outside requests for information. Disclosures under the Act and the Order, however, have been limited due to the necessity to protect intelligence sources and methods and other matters requiring protection. The passage of time as the sole criterion for the declassification does not provide adequate protection. Each item must be carefully reviewed prior to declassification. Disclosures of information revealing past activities can well jeopardize present and future operations and individuals. The review, therefore, is extensive and includes all related and corollary information affected by the disclosure.

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The existing Freedom of Information Act provides protection to intelligence sources and methods by expressly exempting information classified under Executive Order. We question whether the much broadened extensive program of declassification and dissemination to be established under S. 1726 is consistent with the protection of the information involved.

Section 104 provides for the automatic declassification of information unless the President or agency head personally justifies, in writing, that the information requires continued protection. The justification is not delegable and must be submitted to the Comptroller General and to the Government Operations Committees of House and Senate for review by any Member or committee of Congress. No classified information may be withheld from any Member or committee of Congress. Any person may bring court action and require a court review de novo of the sufficiency of the classification of any material deferred from declassification. Noncompliance with a court order subjects an agency head to contempt.

Under the bill, agencies must furnish quarterly to the Comptroller General and to the Congress the names and addresses of all persons who have authority to classify information. However, in furtherance of the proviso to protect sources and methods (noted above), Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A., 403g) exempts the Agency

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from the provision of any law requiring the disclosure of the names of any of its employees. Executive Order 11652 establishes procedures to protect the identity of Agency personnel.

There are other provisions in Section 104 of S. 1762 which raise serious problems:

- a. The authority granted to the Comptroller General to oversee the protection of information in Government, investigate allegations of improper classification, and inspect Agency classification programs can conflict with the Director's statutory responsibilities.
- b. It is impossible for the Director to review personally each year the countless hundreds of thousands of documents involving intelligence sources and methods and to personally justify, in writing, the reasons for continuing their classification.
- c. The one designation "Secret Defense Data" by not recognizing any varying degrees of sensitivity will make it extremely difficult to adequately protect the most sensitive information. A clearly recognized and understood classification such as "Top Secret" not only provides ready identification but assures proper protective handling through uniform procedures.

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S. 1726 clearly conflicts with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods and raises our strong objection to S. 1726. The Director could be faced with a court order to declassify intelligence overriding his determination that disclosure would reveal sources and methods. Regardless of the outcome of the court action, sensitive information would be disclosed in open court. Also, anyone can petition court action to force disclosure of any classified information without showing any interest; whereas, the Government is forced to prove a national interest to protect the information involved.

The administrative requirements under the bill not only place impossible burdens on an agency head but provide no protection to sensitive information. We offer no other comments on other sections of the bill except to note that Title V - COMMUNICATIONS MEDIA PRIVILEGE would protect the identify of all persons furnishing any information to the media including the foreign press, regardless of any indications of criminality in the acquisition of the information involved.

If S. 1726 is favorably considered by the Committee, we request that Section 105 be amended to include an exemption for the Central Intelligence Agency.

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The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

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ROUTING AND RECORD SHEET

STATINTL SUBJECT: (Optional)
DRAFT LETTER (Hon. Sam J. Ervin, Jr.)

FROM: [REDACTED] DLC

EXTENSION

6136

NO.

DATE 26 Feb 74

STATINTL TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

STATINTL 1. OGC

Attn: [REDACTED]

5/8

RHL/

2. [REDACTED]
C/Info Systems Analysis

3. Director of Security

4. [REDACTED]
DLC

5. Assistant Legislative Counsel

6. Believe the proposed reply is just about right. Perhaps the paragraph requesting an exemption for CIA could be more forceful, such as: "In short, I believe S.1726 would severely endanger the ability of this Agency to perform the foreign intelligence activities required of it under the National Security Act. I request, therefore, that if the bill is favorably considered by the Committee that section 105 be amended to provide an exemption for the CIA."

RHL

5/8/74

Approved For Release 2001/09/07 : CIA-RDP75B00380R000500370015-5

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

DRAFT LETTER (Hon. Sam J. Ervin, Jr.)

FROM:

OLC

EXTENSION

6136

NO.

OLC 74-0282

DATE

26 Feb 74

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OGC

Attn:

2.

C/Info Systems Analysis

3.

Director of Security

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The attached draft report reflects your comments on the earlier version circulated. Please review for final comments prior to submission to the Director.

Assistant Legislative Counsel